IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8194 OF 2004

Smt. Nisha alias Nisha Vinod Shrivastava, .. Petitioner

Vs

Shri Vinod Radheshyam Shrivastava, .. Respondent

Mr. R.S.Tripathi with Mr R.C.Dubey, for the petitioner.

Mr R.R.Bhatkar, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 19th October, 2004.

PC:

1. Heard the learned counsel for the parties.

2. By this petition, the petitioner has challenged the order dated 17.8.2004 passed below Exhibit-13 in M.P.No.169/2003, by which the application-Exhibit-13 was rejected. The said application was filed for setting aside the order dated 1.8.2003 by which the main petition was kept for exparte decree and for allowing the petitioner-wife to file written statement. It appears that the application was rejected mainly on the ground that the Court has no powers under Order VIII, Rule 1 of the Civil Procedure Code to extend the time for filing the written statement. Considering the reasons recorded by the learned Judge in the impugned

order, it is clear that the judgment of this Court in **Shailaja A.Sawant Vs. Sayajirao Banpatrao Patil, 2004 (2) Mh.L.J.419** was not considered by the learned Judge. Keeping that in view, in my opinion, the appropriate course would be to direct the learned Judge to consider the application Exhibit-13 afresh in the light of the observations made in Shailaja Sawant's case. Hence, I pass the following order.

(i) The impugned order dated 17.8.2004 is quashed and set aside. The learned Judge to consider the application-Exhibit-13 filed by the petitioner afresh as expeditiously as possible and preferably within a period of four weeks from the date of receipt of this order.

(ii) Needless to state that the learned Judge will pass orders below Exhibit-13 after giving an opportunity of being heard to the parties and after taking into consideration the law laid down by this court in Shailaja Sawant's case.

(iii) The petitioner to communicate this order to the learned Judge within ten days from today.

(iv) The petition is disposed of.

. An authenticated copy of this order may be made available to the parties.

(D.B.BHOSALE, J.)